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Sterling Sav. Bank v. Fairfield Appellant's Brief Dckt. 39907

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STERLING SAVINGS BANK,)	Supreme Court DN 39907-2012
)	Valley County DN CV-2010-466C
Plaintiff/Resondent,)	
)	
vs.)	APPELLANT'S BRIEF
)	
WILLIAM D. FAIRFIELD,)	
)	
Defendant/Appellant.)	

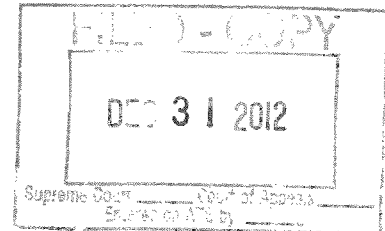


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TABLE OF CASES AND AUTHORITY

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<i>Idaho Rules of Civil Procedure</i> Rule 7(b)(1)	

ISSUES PRESENTED ON APPEAL

- I. Regardless of whether or not the motion for summary judgment was opposed, was the evidence presented sufficient for the granting of the motion?
- II. Should the court have granted the motion for continuance on the pleadings, even though there was no appearance made by the moving party or their attorney?

STATEMENT OF THE CASE

This is an action for a money judgment against the Defendant, pursuant to a deficiency judgment after foreclosure, and a personal guarantee signed by the Defendant. The Plaintiff filed a motion for summary judgment, but did not support the motion with sufficient evidence or documentation to establish that all the requirements under the Idaho Code had been satisfied, including but not limited to notice requirements and evidentiary support. Due to Plaintiff's failure to produce discovery in a timely manner, as required by the Idaho Code, the summary judgment hearing was postponed two times. It was again postponed a third time due to the untimely death of the son of the Defendant's attorney. When requesting a stipulation for another continuance, the Plaintiff denied to continue, so Defendant's attorney filed a motion to continue. Because of the time difference, Defendant's attorney inadvertently missed the hearing time, and his motion to continue was denied, and the motion for summary judgment was granted.

ARGUMENT

I. THE MOTION FOR SUMMARY JUDGMENT WAS IMPROPERLY GRANTED BECAUSE THE PLAINTIFF FAILED TO ADHERE TO THE REQUIRMENTS OF THE IDAHO CODE WITH RESPECT TO NOTICE AND EVIDENTIARY REQUIRMENTS

The authority for filing of a motion for summary judgment is provided in *I.R.C.P.* Rule 56(a). In this case, the Appellant alleges that the Plaintiff failed in its pleadings to give sufficient notice of the amount of the deficiency, and the manner in which the deficiency was calculated, as well as other deficiencies. Further, the motion was not supported by sufficient evidence to warrant the granting of the motion, even if no opposition was filed.

II. THE DEFENDANT'S MOTION FOR CONTINUANCE SHOULD HAVE BEEN GRANTED ON THE PLEADINGS

The Defendant's motion, and subsequent reply to Plaintiff's opposition, included a declaration of counsel that provided sufficient facts to support the motion. It was essentially the first motion filed for cause, and the cause was sufficient to warrant the motion. The court abused its discretion by denying the motion, even though the moving party was not present at the hearing.

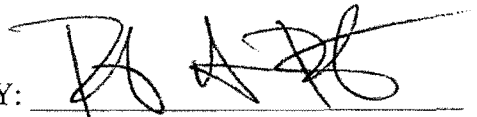
CONCLUSION

For the reasons stated above, the Appellant requests that this Court find that Plaintiff's summary judgment motion was not supported by sufficient evidence to support the granting of the motion, and that the court abused its discretion by denying the Defendant's motion to continue.

Dated this 31 day of December, 2012.

LAW OFFICES OF ROBERT A. BARTLETT

BY:



Robert A. Bartlett

Attorney for the Defendant/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of December, 2012, I caused a true and correct copy of the foregoing document to be served by the method indicated below, and addressed to the following:

Mark A. Ellingsen
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